



REPUBLIC OF KENYA



**Omare v Mojumbe (Miscellaneous Civil Application E175 of 2022)  
[2023] KEHC 793 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION E175 OF 2022  
RN NYAKUNDI, J  
JANUARY 27, 2023**

**BETWEEN**

**VINCENT OMARE ..... PLAINTIFF**

**AND**

**FREDRICK MOJUMBE ..... DEFENDANT**

**RULING**

1. The Applicant approached this court *vide* a Notice of Motion dated 6<sup>th</sup> September 2022 seeking the following orders;
  1. The matter be certified as urgent.
  2. The proceedings in Civil Suit No. 620 of 2021 be stayed pending the hearing and outcome of this application.
  3. Eldoret Civil Suit No. 620 of 2021 be and is hereby transferred from The Chief Magistrates Court at Eldoret to the Magistrate’s court at Mavoko Law Courts for hearing and further disposal.
  4. Costs of this application be provided for
2. The application is premised on the grounds set out therein and the contents of the supporting affidavit.
3. A brief summary of the facts is that the Plaintiff instituted this suit *vide* a plaint dated 6<sup>th</sup> August 2021 in the Chief magistrates’ court at Eldoret seeking a declaration that he is the owner of motor vehicle registration number KCX 279s, an order directing the defendant to execute all instruments of transfer in favour of the Plaintiff in respect of said motor vehicle, general damages, costs of the suit and interest on the same.



4. The Applicant's basis for seeking the orders is that the subject matter is within the jurisdiction of Mavoko and there is a competent magistrates' court capable of handling the matter. He also claimed that the Respondent has used his familiarity as a court clerk in Eldoret to manipulate the proceedings and that the suit was filed to threaten and spite him. He contended that it was in the interests of justice to have the matter heard at the Chief Magistrates' court at Mavoko.
5. The Respondent opposed the application *vide* a replying affidavit dated 11<sup>th</sup> November 2021. It was his contention that the application is bad in law and an abuse of the court process. He deposed that he works as an accountant with the judiciary and is stationed in Lodwar therefore he has no influence with court decisions. Further, the cause of action arose in Eldoret and most of the transactions were done within Eldoret. The subject matter is movable property and the matter has extensively been dealt with by the Chief Magistrates' court at Eldoret. The Respondent stated that the matter of territorial jurisdiction was raised in the Chief Magistrates' court and the same was dismissed. He urged that the application did not demonstrate any prejudice likely to be suffered should this matter be heard in Eldoret.

### **Issues for Determination**

6. Whether the suit should be transferred to Mavoko Chief Magistrates' Court
7. The application is mainly premised on section 18 of the *Civil Procedure Act* which states;
  1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
    - a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
    - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
      - i. try or dispose of the same; or
      - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
      - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
8. Section 14 of the *Civil Procedure Act* states;

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the Plaintiff in either of those courts.
9. Section 15 of the *Civil Procedure Act* states;

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

  - a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or



- b. any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. the cause of action, wholly or in part, arises.

10. The broad perspective of the court on transfer of cases by the high court was enunciated in the case of *David Kabungu v Zikarenga & 4 others* Kampala HCCS NO.36 OF 1995 the court held as follows

“Section 18(1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction ..... It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer could be refused.....”

- 11. I have perused the application and the annexures thereto including the plaint. I note that the plaint does not contain the place where the cause of action arose. However, as per the provisions of the law, the cause of action can still be determined by the court in Eldoret as the Plaintiff contends that the transactions that form part of the cause of action took place in Eldoret. Further, given that the subject matter is the movable property, the provisions of section 14 of the *Civil Procedure Act* shall apply. Additionally, the Applicant has not presented any evidence to prove that the Respondent is a court clerk at Eldoret law courts or that he has interfered or influenced any part of the proceedings.
- 12. Further, given that the matter has already proceeded extensively in the Chief Magistrate’s court in Eldoret, it would be an affront to justice to transfer a matter that can be determined by a competent court in Eldoret all the way to Mavoko. This will occasion undue delay which will occasion injustice on the Plaintiff. I dare say that the advent of the Covid 19 pandemic flattened the world making every human aspect adversely affected. It forced many sector wide professional organisations consider innovative and creative solutions for service delivery. Presently it is a norm than the exception that the judiciary embraced video conferencing, remote appearance and virtual courts in the administration of justice. Despite some hiccups this digital forum has been designed as a tool of convenience for dispute resolution. It is indisputable that traditional courts based on territorial jurisdiction may be a thing of the past. This is why in dealing with backlogs the virtual courts will come in handy to achieve real time delivery of justice. For the purpose of this application there is no challenge to the personal and subject



jurisdiction of the chief magistrate at Eldoret Court. Essentially the thrust of the argument advanced by the applicant are not tenable to warrant this court to exercise discretion under section 1,1A,3A, 3 and 63(C), 18of the *civil procedure act* and order 50 of the *Civil procedure rules* 2010.

13. I hereby find that the application is unmerited and fails in its entirety. It is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JANUARY, 2023.**

In the presence of:

Mr Oyaro for the respondent

**R. NYAKUNDI**

**JUDGE**

**Coram: Hon. Justice R. Nyakundi**

**Makori Omboga & CO. Adv for the defendant/applicant**

**Oyaro J & Associates for the plaintiff/respondent**

